



Comptroller General
of the United States

Washington, D.C. 20548

Van Schaik

Decision

Matter of: RGI, Inc.
File: B-243387
Date: July 23, 1991

Edward J. Tolchin, Esq., Fettmann & Tolchin, for the protester.
Jules DuPeza for Advanced Management, Inc., an interested party.
Jaime Ramon, Esq., Office of Personnel Management, for the agency.
John W. Van Schaik, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency was not required to downgrade awardee's proposal because it offered a data base specialist who was working for the protester in the same position on the incumbent contract. Although the solicitation required that the awardee's personnel be available for a phase-in period 30 days before the expiration of the previous contract, the purpose of the phase-in period is to allow an orderly transition of the work from the incumbent contractor to the awardee and, since the individual proposed by the awardee as a data base specialist is already performing the same job on the incumbent contract, the purpose of the phase-in period will be served.
2. Protest that agency did not evaluate whether personnel proposed by awardee met the solicitation requirement that staff be "separate, completely independent, dedicated, full-time," and not shared with other contractor accounts is denied. Awardee took no exception to requirements of the solicitation relating to availability of its proposed personnel and, while some personnel proposed by awardee were already employees of that firm and apparently were working on other projects, this was not prohibited by the solicitation.
3. Protest that agency failed to evaluate awardee's professional employee compensation plan and awardee's ability to recruit and retain employees is denied where agency considered salary and benefits proposed by awardee, concluded that awardee has excellent policies and recruiting practices and reasonably determined that awardee's proposed compensation levels are not unrealistically low.

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DECISION

RGI, Inc. protests the award of a contract to Advanced Management, Inc. under request for proposals (RFP) No. OPM-RFP-90-02002, issued by the Office of Personnel Management (OPM) for software support services for the agency's Personnel Investigations Processing System.

We deny the protest.

The solicitation contemplated award of a cost-plus-fixed-fee labor hour contract for software support, system maintenance, documentation, testing and technical support for a base period from the date of award until September 30, 1991, and 5 option years. The solicitation listed estimated labor hours for six labor categories and required offerors to submit, for each person proposed, a signed form indicating that they would be available to work if the contract were awarded to the offeror. Also, the solicitation stated that all contractor staff must be available at the "start work date," which is "approximately thirty (30) days prior to expiration of the current contract." In section F.3, the solicitation also stated that staff providing support under the contract were to be "separate, completely independent, dedicated, full-time, on-site . . . based in Washington, D.C." and, except for temporary substitutes, "sharing of contractor staff with other contractor accounts is unacceptable."

The award was to be made to the offeror whose proposal offered the best value to the government, cost and other factors considered. The solicitation indicated that technical/management considerations would be paramount to cost and included the following technical/management evaluation subfactors: (1) Organization/Resources (worth 20 points); (2) Management plan (15 points); (3) Staffing plan (15 points); and (4) Personnel qualifications (50 points).

Four firms submitted proposals, including RGI, the incumbent. After evaluating the initial proposals, OPM included all four in the competitive range, held discussions, and requested best and final offers (BAFO). As a result of the BAFO evaluation, the two highest scored proposals were Advanced Management's at 88.42, with a total estimated cost of \$3,673,086, and RGI's at 85.88, with an estimated cost of \$3,824,783.

In awarding the contract, OPM noted that Advanced Management had the highest technical score and its estimated cost was one of the lowest. The agency also noted that Advanced Management's technical/management proposal was rated 2.54 points higher than RGI's, the next highest, as a result of higher scores on three of the four subfactors, including

Personnel Qualifications, the most important subfactor. With respect to cost, the agency noted that Advanced Management's estimated cost was 5 percent lower than that of the RGI proposal, which was the next highest rated one.

RGI argues that the technical evaluation was flawed because OPM did not evaluate whether the resumes submitted with Advanced Management's proposal met the solicitation requirements. Specifically, the protester argues that the agency did not evaluate whether the individual proposed by Advanced Management as its data base specialist would be available at the start work date, and would be completely dedicated, full-time and on-site, 30 days prior to the expiration of the incumbent contract, as required by the solicitation. RGI argues that, in fact, the individual proposed by Advanced Management could not be available when required because he currently fills the data base specialist position for RGI on the incumbent contract and, therefore, he will be working for RGI until the current contract expires.

The evaluation of technical proposals is primarily the responsibility of the contracting agency since it is responsible for defining its needs and the best method of accommodating them and must bear the consequences of a defective evaluation; therefore, we will not engage in an independent evaluation of technical proposals but will examine the agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria. Anamet Laboratories, Inc., B-241002, Jan. 14, 1991, 91-1 CPD ¶ 31.

Our review of the evaluation record discloses no basis for concluding that OPM acted unreasonably in evaluating Advanced Management's proposal. First, the proposal included the required commitment from the individual proposed as a data base specialist and RGI does not argue that the individual in question is unwilling or unable to work for Advanced Management. According to the solicitation, the purpose of the phase-in period is to allow an orderly transition of the work from the incumbent contractor to the awardee. Since the individual proposed by Advanced Management as a data base specialist is already performing the same job on RGI's incumbent contract, the purpose of the phase-in period will be served whether he is working for Advanced Management or RGI during that period. Although Advanced Management's data base specialist may not be available to the awardee during the phase-in period, as required by the solicitation, we simply fail to see any competitive harm in OPM's accepting Advanced Management's offer of this individual. RGI's reading of the solicitation would require OPM to reject or downgrade any proposal that included personnel who are currently working on the incumbent contract. We think that would be unreasonable.

RGI also argues that the agency did not evaluate whether other personnel proposed by Advanced Management met the solicitation requirement that staff be "separate, completely independent, dedicated, full-time," and not be shared with other contractor accounts. Based on "information and belief," RGI maintains that most of the personnel proposed by Advanced Management already work for that firm and are assigned to other accounts. RGI requests that we confirm this allegation by reviewing the resumes submitted with Advanced Management's proposal.

In response, OPM explains that the firm submitted the required personnel commitment forms for all of its proposed employees and that during discussions the firm confirmed its understanding of the solicitation requirements relating to substitution of personnel. Based on this evaluation, the agency argues that it assured that the personnel proposed by the awardee would be available and dedicated to performing the contract full-time.

We have no basis to question the agency's conclusion that Advanced Management's staff would be dedicated to this project full-time and would not be shared with other accounts. Our review of Advanced Management's proposal, including the firm's resumes, indicates that Advanced Management took no exception to any requirements of the solicitation relating to the availability of its proposed personnel. Some personnel proposed by Advanced Management were already employees of that firm and apparently were working on other projects. Nonetheless, this was not prohibited by the solicitation and there was no reason for OPM to assume that those individuals would continue to work on other projects. Moreover, to the extent that RGI challenges OPM's assessment that Advanced Management is capable of dedicating the employees it proposed to performing the contract full-time, this allegation relates to the agency's affirmative determination of responsibility which we will not review absent a showing of possible fraud or bad faith or the alleged failure to properly apply definitive evaluation criteria. Bid Protest Regulations, 4 C.F.R. § 21.3(m)(5) (1991); United HealthServ Inc., B-232640; B-232642; B-232643, Jan. 18, 1989, 89-1 CPD ¶ 43. The protester has not suggested that either circumstance applies concerning this issue and we find nothing to the contrary in the record.

RGI also argues that OPM failed to follow the solicitation's evaluation criteria relating to benefits and compensation for professional employees. In this respect, the RFP in section L.10 stated that offerors were required to submit a total compensation plan setting forth salaries and fringe benefits for proposed professional employees and that the agency "will evaluate the plan to assure that it reflects a sound

management approach and understanding of the contract requirements." Section L.10 also states that the evaluation was to assess the offeror's "ability to provide uninterrupted high quality work," and would consider an offeror's proposed professional compensation "in terms of its impact on recruiting and retention, its realism, and its consistency with a total plan for compensation." In addition, section L.10 stated that proposals with compensation levels lower than those of predecessor contractors for the same work would be evaluated "on the basis of maintaining program continuity, uninterrupted high-quality work, and availability of required competent professional service employees."

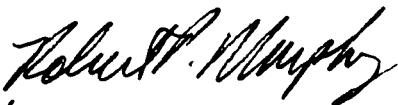
RGI argues that OPM did not consider any of these matters in evaluating the awardee's proposal and that the agency's response to this contention--that there is only a small difference between the total estimated cost of RGI and the awardee--misses the point. According to RGI, had it known that professional compensation was irrelevant to the evaluation, it would have proposed lower compensation or different, lower paid personnel. RGI argues that Advanced Management's proposal should have been rejected as unrealistic or its proposed labor rates should have been adjusted upwards to reflect realistic costs.

We have reviewed OPM's evaluation of Advance Management's cost proposal and find that, contrary to RGI's assertions, the agency evaluated Advanced Management's professional benefits and compensation as required by the solicitation. For example, during discussions, OPM specifically asked Advanced Management for its compensation plan for professional employees and, in addition to the salaries it proposed for professional employees, in its best and final offer, the firm provided a detailed explanation of the benefits it provides to professional employees.

In reviewing Advanced Management's personnel practices, OPM evaluators noted that the firm has in place "excellent" policies and recruiting techniques. In addition, during discussions, the agency requested and received assurances that Advance Management would be able to recruit professional employees and would be able to keep its proposed team intact and available during performance of the contract. Evaluators also were satisfied that Advanced Management could provide full personnel coverage under the contract. Thus, OPM evaluators specifically considered and approved Advanced Management's professional compensation and benefits and its ability to recruit and retain employees; contrary to the protester's contention, these matters were not irrelevant in the evaluation.

Further, the record shows that OPM's cost analysis reasonably determined that Advanced Management's proposed compensation levels were not, as RGI asserts, unrealistically low. The agency made detailed comparisons of the offerors' proposed labor rates for the labor categories required by the RFP. As OPM notes, although Advanced Management's proposed hourly rates generally are lower than RGI's, for some labor categories in some years, Advanced Management proposed the higher rates. In addition, the agency points out that even with the awardee's lower labor rates, the difference between it and RGI in total estimated costs over the 60-month life of the contract is only \$151,697. Under the circumstances, we find no basis for RGI's assertion that Advanced Management's proposed labor rates are unrealistically low.

The protest is denied.^{1/}


for James F. Hinchman
General Counsel

^{1/} Initially, RGI also complained that the cost evaluation should have considered the costs of phasing in a new contractor and that OPM's evaluators were unqualified. In response to these allegations, OPM argued that the solicitation did not require offerors to separately identify phase-in costs and the contracting officer determined that the evaluators had the necessary qualifications to evaluate proposals. In its comments on the agency report, however, the protester did not attempt to rebut the agency's responses to these allegations; therefore, we consider RGI to have abandoned these bases of protest. Ross Aviation, Inc., B-236952, Jan. 22, 1990, 90-1 CPD ¶ 83.